

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

JOHN MORRELL & CO.
Public Water Supply Facility No. 9778897

**ADMINISTRATIVE
CONSENT ORDER
NO. 2007-WS-01**

**TO: CT Corporation System,
Registered Agent
2222 Grand Avenue
Des Moines, IA 50312**

**Dan Paquin, Vice President
and General Manager
John Morrell & Co.
P.O. Box 2430, 1200 Bluff Road
Sioux City, Iowa 51106**

I. SUMMARY

The Department of Natural Resources (Department) and John Morrell & Co. (John Morrell) have agreed to enter into this administrative consent order concerning the retaining of a certified operator by John Morrell for the public water supply serving its Sioux City, Iowa facility. This order requires John Morrell to retain a properly certified operator and to pay a penalty of \$5,400.00.

Any questions regarding this order should be directed to:

Relating to technical requirements:

Sheila Tucl
Environmental Specialist
IDNR Field Office No. 3
1900 N. Grand, Gateway North Suite E17
Spencer, Iowa 51301-2200
Ph: 712/262-4177

Relating to appeal rights:

Diana Hansen
Attorney at Law
Iowa Department of Natural Resources
Henry A. Wallace Building, 502 E. 9th
Des Moines, Iowa 50319-0034
Ph: 515/281-6267

Payment of penalty to:

Iowa Dept. of Natural Resources
Henry A. Wallace Building
502 East 9th
Des Moines, Iowa 50319-0034

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II. JURISDICTION

The parties hereby agree that this order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part I, and the rules promulgated or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

The Department and John Morrell hereby agree to the following statement of facts:

1. This public water supply facility (PWS) provides piped water to the public for human consumption and regularly serves at least 25 persons at the John Morrell plant located at 1200 Bluff Road, Sioux City, Iowa. This PWS has one service connection and serves a population of 1,300 employees. Water is derived from two deep wells, well no. 1 and well no. 2. Well no. 1, the south well, was drilled in 1974 to a depth of 120 feet. Well no. 2, the north well, was drilled in 1992 to a depth of 157 feet. Both wells are normally operated simultaneously. Treatment consists of gas chlorination and a blend of ortho and poly phosphate for corrosion control and iron sequestration. There are no storage facilities. The system has a connection to the Sioux City PWS used only for emergency purposes.

This PWS is classified as a nontransient noncommunity public water system. The facility pumps 2,024,000 gallons per day on average and is designated as a Grade 3 Water Treatment and Grade 3 Water Distribution facility based on this pumpage. Due to this John Morrell is required to retain an operator that has Grade 3 certification for both water treatment and water distribution.

2. On November 8, 2004 the Department's Field Office No. 3 sent to John Morrell a Notice of Violation (NOV) letter for failure to have a properly certified operator. The letter required John Morrell to obtain the services of a properly certified operator by June 15, 2005. Field Office No. 3 received Form 52 from John Morrell indicating that an employee would take the exams to obtain Grade 3 certification by June 7, 2005.

3. A revised water supply operation permit was sent to this facility on December 28, 2004. The revised permit required this facility to retain a certified operator with Grade 3 Water Treatment and Grade 3 Water Distribution certification.

4. On June 27, 2005 Field Office No. 3 conducted a sanitary survey at John Morrell. The report of the inspection cited John Morrell for failure to obtain a properly certified operator and required that it obtain a properly certified operator by September 30, 2005.

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5. By e-mail correspondence on December 21, 2005, Field Office No. 3 required that John Morrell obtain a properly certified operator by February 15, 2006. John Morrell responded that it thought that this had been resolved when its operator passed the Grade 2 Water Treatment and Grade 2 Water Distribution exams on September 15, 2005. Field Office No. 3 responded that a Grade 3 certification was needed for both. A further extension was given through April 11, 2006 to take both exams. The operator took the Grade 3 water distribution exam but failed.

6. On June 20, 2006 Field Office No. 3 inspectors conducted a wastewater pretreatment inspection at John Morrell. During that inspection the matter of obtaining a properly certified operator for the PWS was discussed. The PWS operator informed the field office inspectors that the company had given him until August 1, 2006 to obtain the proper certification. Field Office No. 3 informed the operator that if he failed the exam, John Morrell would have to hire a properly certified operator for the PWS by September 1, 2006. The operator for John Morrell passed exams for Grade 3 Water Treatment and Grade 3 Water Distribution in December 2006. The facility now has a properly certified operator for this system, as of December 2006.

IV. CONCLUSIONS OF LAW

The Department and John Morrell agree to the following conclusions of law:

1. Iowa Code section 455B.172 makes this Department the agency of the state to conduct the PWS program. Iowa Code section 455B.171 defines a "public water supply system" as a system for the provision of piped water for human consumption, if the system has at least fifteen service connections or regularly serves at least twenty-five individuals. Iowa Code sections 455B.173(3), (5), and (6) authorize the Environmental Protection Commission to promulgate rules relating to the operation of PWS systems, to adopt drinking water standards to assure compliance with federal standards adopted pursuant to the federal Safe Drinking Water Act, and to adopt rules relating to monitoring, record keeping, and reporting requirements for any PWS. The Commission has adopted such rules at 567 IAC chapters 40-43.

2. Rule 567 IAC 40.2(455B), further defines PWS by defining "community water system" as a PWS which has at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents, consistent with federal regulations. A noncommunity water system is any other PWS. A nontransient noncommunity water system is a PWS other than a community water system that regularly serves at least 25 of the same persons at least four hours or more per day, for four days or more per week, for 26 weeks or more per year. This facility is a nontransient noncommunity water system.

3. Subrule 567 IAC 43.1(5)"a" authorizes the Department to require a nontransient noncommunity (NTNC) PWS system to hire a certified operator to be in direct

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responsible charge. "All community and nontransient noncommunity public water systems must have a certified operator in direct responsible charge of the treatment and distribution systems, in accordance with 567-- Chapters 40 through 44 and 81."

4. Subrule 567 IAC 81.2(3) pertains to the operator-in-charge certification requirement. This subrule requires the operator in charge to hold a certificate of the same classification of the plant or water distribution system and of equal or higher grade than the grade designated for that plant or distribution system.

The classification for water treatment is based on daily pumpage under 567 IAC 81.4(1). Under this subrule any daily pumpage over 1.5 MG puts a facility in the Water Treatment 3 and Water Distribution 3 classification. Since the water treatment plant has an average daily pumpage of about 2.0 MG, it is classified as a Water Treatment 3 and Water Distribution 3 facility.

V. ORDER

THEREFORE, the Department hereby orders and John Morrell consents to do the following:

1. To retain a properly certified operator qualified to operate this Grade 3 Water Treatment and Grade 3 Water Distribution System.
2. To pay a penalty of \$5,400.00. The penalty shall be paid to the Department within 60 days after the Director's signature to this order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to this chapter, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative order with a penalty. The administrative penalty assessed by this order is determined as follows:

a. Economic Benefit. There have been cost savings to the facility in not retaining a properly certified operator to operate its PWS. The Department estimates that the company saved at least \$100.00 to \$200.00 per month by not retaining a certified operator. The sanitary survey conducted on June 27, 2005 required that the facility obtain a certified operator by September 30, 2005. The operator passed the Grade 2 exams in

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September 2005. The operator passed the Grade 3 exams in December 2006. The amount of \$1,400.00 is assessed for this factor, based on not finally retaining a properly certified operator by September 30, 2005.

b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. This matter involves a potential threat to public health. Failure to have a properly certified operator to maintain and operate the water treatment system and to sample as required could jeopardize the water quality at this facility and put its employees at risk. Because of the relative importance of the drinking water program, \$2,000.00 is assessed for this factor.

c. Culpability. The facility was sent notices of deficiency in the form of an inspection report from a sanitary survey, notice of violation letters, and other communications. There was a long history of noncompliance at this facility. Additionally, this facility was given ample time to comply. Therefore, \$2,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175, and 561 IAC 7.5(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Environmental Protection Commission. This order is entered into knowingly by and with the consent of John Morrell. By signature to this order, all rights to appeal this order are waived.


VIII. NONCOMPLIANCE

Compliance with Section "V. Order" of this order constitutes full satisfaction of all requirements pertaining to the violations described in this order. Failure to comply with this order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

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DAN PAQUIN
VICE PRESIDENT AND GENERAL MANAGER
JOHN MORRELL & CO.

Dated this 15 day of
May, 2007


RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 23 day of
May, 2007

John Morrell & Co.- PWS ID. No. 9778897, Sheila Tuel- Field Office No. 3, Laurie Sharp- Water Supply Operations Section, James Warren- Water Supply Operations Section, Diana L. Hansen- Legal Services, U.S.E.P.A. Region VII, I.B.2.e.